

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.56.506, 17.56.507, 17.56.607, and)	ON PROPOSED AMENDMENT
17.56.608 pertaining to reporting of)	
confirmed releases, adoption by)	(UNDERGROUND STORAGE
reference, and release categorization)	TANKS)

TO: All Concerned Persons

1. On December 12, 2016, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., December 6, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department within the specified timeframes and in the following manner:

(a) remains the same.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department by a method that ensures the department receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil at UST sites, published in the first numeric column of

the Tier 1 Surface Soil RBSL Table (Table 1) of Montana Tier 4 Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;

(ii) and (iii) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to strike "Tier 1" in ARM 17.56.506 to make this cross reference consistent with the revised title of the updated Montana Risk-Based Correction Action Guidance for Petroleum Releases (RBCA) that was published in September of 2016 and that is proposed for adoption below by reference in ARM 17.56.507(1)(b).

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana ~~Tier 4~~ Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September ~~2009~~ 2016);

(c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Table (May ~~2009~~ 2016); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to adopt by reference the most current version of the Montana Risk-Based Correction Action Guidance for Petroleum Releases (RBCA) so that it can be used by the underground storage tank program. The department conducts periodic reviews of the RBCA to determine if changes to methods and toxicity information warrant updating the guidance. The most current version of RBCA was published in September 2016. Additionally, in May 2016, the United States Environmental Protection Agency's (EPA) updated its regional screening levels.

The primary reasons for the update to the RBCA were the release of updated EPA inhalation Provisional Peer Reviewed Toxicity Values (PPRTVs, September 2009) and February 2014 Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors. In addition, the department updated leaching to groundwater parameters to match those currently used in the May 2016 EPA Regional Screening Levels tables. RBSLs for 1-methylnaphthalene and 2-methylnaphthalene were also added since these polycyclic aromatic hydrocarbons (PAHs) are often found along with other PAHs.

The department also expanded the RBCA Guidance with a description of a RBCA Tier 2 process involving adjustment of RBSLs based upon site-specific conditions. The guidance now includes information regarding the Air-Phase Hydrocarbon Calculator and the department updated the Calculator to account for concentrations of compounds found in the department's August 2012 Typical Indoor

Air Concentrations of Volatile Organic Compounds in Non-Smoking Montana Residences Not Impacted by Vapor Intrusion that are higher than their screening levels.

In general, the RBCA text has also been updated and clarified. The RBSLs are still based upon the same fractions originally included in Massachusetts guidance so the department added text regarding conversion of old total petroleum hydrocarbon, diesel range organics, and gasoline range organics data to estimated petroleum fraction data.

The RBCA Guidance proposed for adoption includes language regarding conceptual site models that will assist with site characterization and evaluation. The department evaluated and clarified language regarding metals analyses and proper analytical methods. In addition, the department changed the number of significant figures of each RBSL from one to two based upon EPA risk assessment guidance.

The result of all the changes is that some of the RBSLs are higher than those in the 2009 RBCA Guidance and some are lower. Whether an RBSL went up or down was dependent upon whether it is based upon leaching or direct contact. The fractions with inhalation toxicity changed substantially due to the change in toxicity criteria. Some more minor changes resulted from the changes in exposure factors. Minor RBSL concentration changes may be the result of different rounding.

Additionally, it is necessary to update the regional screening level reference to ensure the most recent version of the document is used by the department. The regional screening levels are being used by various states and EPA and provide screening values that provide the same levels of protection for non-petroleum compounds as are provided by the risk-based guidance for petroleum previously adopted by the department. The regional screening levels are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure and are used to screen potential risk at a wide variety of sites. These regional screening levels also provide soil screening levels that address migration to ground water. The department is incorporating the most recent version of the regional screening levels to ensure updates, based on new toxicity data or other factors, are adequately considered. The primary updates are summarized below.

EPA generated new tables to reflect changes in the toxicity and chemical-specific parameters per the screening level hierarchies. Screening levels were revised for seven chemicals due to toxicity value changes. The chemical name associated with CAS 114-26-1 was changed. The programming of the soil to ground water scenario was changed to allow the calculation of the soil screening level when the dimensionless Henry's Law Constant (H') is missing. EPA revised the programming of the diffusivity in air equation to use the dioxin-specific equation for furans and dioxin-like PCBs. The hierarchy of the organic carbon absorption coefficient was modified to use the soil screening level first for the non ionizable organics identified. Various parameters were changed for chlordane, hydrogen cyanide, cyanide (CN-) and white phosphorus. Freezing point values from Yaws were added to the sixth position of the hierarchy. Finally, there were updates to five sections of the user's guide and to six FAQs. In addition, an FAQ was added concerning white phosphorus.

The September 2016 version of the RBCA can be found at http://deq.mt.gov/Land/statesuperfund/rbca_guide, or by contacting the department's

Waste Management and Remediation Division at (406) 444-6444. EPA's RSL tables can be found at <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables-may-2016>, or by contacting the department's Waste Management and Remediation Division at (406) 444-6444.

17.56.607 RELEASE CATEGORIZATION (1) through (3) remain the same.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) remains the same.

(b) risks to human health, safety and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5} , to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) Tier 1 evaluation using Montana Tier-4 Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or

(ii) through (12) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to strike "Tier 1" in ARM 17.56.607(4)(b)(i) based on the same rationale provided in ARM 17.56.506.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain the same.

(c) Montana Tier-4 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September 2009 2016); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: Please refer to the statement of reasonable necessity that follows ARM 17.56.506 for a full explanation of the reasons for the changes to ARM 17.56.608(1)(c).

The September 2016 version of the RBCA can be found at http://deq.mt.gov/Land/statesuperfund/rbca_guide, or by contacting the department's

Waste Management and Remediation Division at (406) 444-6444. EPA's RSL tables can be found at <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables-may-2016>, or by contacting the department's Waste Management and Remediation Division at (406) 444-6444.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to dhartman2@mt.gov, no later than 5:00 p.m., December 15, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

6. Paul Nicol, attorney for the department, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL

21-11/10/16

MAR Notice No. 17-387

QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS

Director

Certified to the Secretary of State, October 31, 2016.